

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
WEDNESDAY, MAY 23, 2007

HOLIDAY INN
2460 EISENHOWER AVENUE
ALEXANDRIA, VIRGINIA

Board Members Present:

Richard D. Langford, Chair
John N. Hanson
Bruce C. Buckheit

Vivian E. Thomson, Vice-Chair
Hullihen W. Moore

Department of Environmental Quality:

David K. Paylor, Director

Cindy M. Berndt

Attorney General's Office:

Carl Josephson
Senior Assistant Attorney General

The meeting was convened at 9:35 a.m., went into closed session at 12:25 p.m., returned to open session at 1:22 p.m., recessed at 1:22 p.m., reconvened at 2:05 and adjourned at 3:15 p.m.

Minute No. 1 - Ambient Air Quality Standards (9 VAC 5 Chapter 30, Rev. F06): Mr. James E. Sydnor and Ms. Karen Sabasteanski presented amendments to the regulations for the control and abatement of air pollution. The amendments would add requirements for reference conditions [9 VAC 5-30-15]; remove old requirements for PM₁₀ and revise text for consistency with federal requirements [9 VAC 5-30-60 and 9 VAC 5-30-65]; and add requirements for PM_{2.5} [9 VAC 5-30-66]. They explained that the amendments are exempt from state public participation requirements.

Based on the Board book material, staff presentation and Board discussion, the Board on a motion by Ms. Thomson, unanimously adopted the amendments using the exempted procedure established by the Administrative Process Act with an effective date of August 1, 2007, and affirmed that it would receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

In response to additional discussion by the Board, the Department will report to the Board at a future meeting on an evaluation of the U.S. Environmental Protection Agency's science advisory committee's recommendations and what other states are doing about considering the committee's recommendations.

Minute No. 2 - Best Available Retrofit Technology (Bart) (Rev. G05): Mr. James E. Sydnor and Ms. Karen G. Sabasteanski presented amendments to the regulations for the control and abatement of air pollution. The amendments address requirements for best available retrofit technology (BART) for any BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in any Class I area.

They informed the Board that the regulation (1) identifies the sources and geographic areas to which the regulation applies, as well as exemptions. [9 VAC 5-40-7550]; (2) describes exemptions from control [9 VAC 5-40-7560]; (3) defines terms unique to the article [9 VAC 5-40-7570]; (4) establishes a standard for regional haze pollutants [9 VAC 5-40-7580]; (5) describes criteria and procedures for

making BART determinations [9 VAC 5-40-7590]; (6) references state standards for visible emissions, fugitive dust/emissions, odor, and toxic pollutants [9 VAC 5-40-7600 through 9 VAC 5-40-7630]; (7) specifies compliance requirements, including testing schedules, [9 VAC 5-40-7640 and 9 VAC 5-40-7650]; (8) includes test methods and procedures for determining compliance [9 VAC 5-40-7660]; (9) requires installation, calibration, maintenance, and operation of equipment necessary to monitor compliance [9 VAC 5-40-7670]; (10) requires that records of monitoring and test results be gathered, maintained, and reported at certain intervals [9 VAC 5-40-7680]; (11) requires certain procedures to be followed in the event of facility and control equipment maintenance or malfunction [9 VAC 5-40-7700]; and (12) provides references for state requirements for registration and permits. [9 VAC 5-40-7690 and 9 VAC 5-40-7710]. In addition, they explained that the amendments are exempt from state and federal public participation requirements.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Buckheit, unanimously approved the amendments using the exempted process established in the Administrative Process Act with an effective date of August 1, 2007, and affirmed that it would receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

In response to additional discussion by the Board, the Department will report to the Board at a future meeting on visibility issues in Class 1 areas and would include alternatives to accomplish additional improvements in visibility through such things as lower thresholds or earlier compliance.

Minute No. 3 – High Priority Violators Report: The Board received a report on high priority violators.

Minute No. 4 – Public Forum: Mr. Richard Ward appeared during the public forum to advise the Board of compliance issues surrounding Virginia Paving Company's asphalt facility Alexandria. He provided the Board with information on the plant that has been provided to the City of Alexandria, the U.S. Environmental Protection Agency and the Department of Environmental Quality. He informed the Board that based on his review of the Company's data he raised several questions with Board; e.g., is Virginia Paving in current violation of their existing air permit, did Virginia Paving willfully conduct a stack test under unrealistic conditions so as to obtain an air permit which permits them to produce 1.5 million tons of asphalt per year.

Staff advised the Board that a review of the material had not been completed. Mr. Paylor informed the Board that we will complete the review as expeditiously as possible and advise the Board of the results.

Minute No. 5 – Mirant Potomac Generating Power Station: Mr. David Paylor summarized for the Board the items that the staff would be presenting to the Board and gave a brief history of the efforts that have been ongoing to protect public health and the environment.

Mr. James E. Sydnor discussed the various approaches to a comprehensive response to protecting the air quality standards, briefed the Board on the various permit options and the issues that have arisen with the modeling used to establish limits for the permit.

Mr. Michael Dowd briefed the Board on the most recent negotiations with Mirant on the consent order and detailed for the Board changes to the consent order that had been released for public comment that had been agreed to by the Department and Mirant.

To follow up on Board requests from the public hearing on May 22, 2007, the Board asked representatives of Mirant to address the pictures presented during the public hearing on May 22, 2007. Mr. Mike Stumpf from Mirant briefed the Board on the conditions at the plant during the time the

pictures were taken. The Board then asked the City of Alexandria representatives to address the modeling questions from the public hearing. Mr. William Skrabak and Ms. Maureen Barrett responded on behalf of the City and Mr. David Shea responded on behalf of Mirant. The Board then received additional comment letters from two legislators presented by Ms. Chimento. Lastly, the Board heard brief summary comments from Mr. William Skrabak from Alexandria and Mr. Robert Driscoll from Mirant.

On a unanimous vote on a motion from Mr. Langford and seconded by Mr. Hanson went into closed session pursuant to Section 2.2-3711(A) (7) of the Code of Virginia for consultation with legal counsel and briefings by staff members concerning Mirant Potomac Generating Power Station.

The Board returned to open session and certified that, to each members knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. (A roll call vote was taken and all members voted aye.)

Based on the Board book material, staff presentation and Board discussion, Mr. Langford moved that the Board approve issuance of the consent order negotiated by the Department and Mirant. The motion failed 2 to 3 (Mr. Langford and Mr. Hanson voted aye. Mr. Moore, Ms. Thomson and Mr. Buckheit voted no.)

The Board then, based on a motion by Mr. Buckheit, (1) directed the Director of the Department to issue a state operating permit for SO₂ no later than June 1st of this year; (2) directed that the permit would be immediately effective and will be based on the option 1 as noticed as reformed by such technical changes as are necessary in the Department's judgment to reflect the most accurate modeling available as of the date of promulgation of the permit; (3) directed that the limits in such permit shall not be significantly less protective of the environment than those set out in the proposal; (4) directed that the permit would also incorporate such terms as are necessary as to provide an alternate compliance option to Mirant provided that Mirant shall be in compliance with the terms of the permit so long as it is in compliance with the terms of the DOE emergency order including the EPA administrative order, irrespective of the fact that it has an expiration date that may have passed, until such time as the Director of the Department notifies Mirant that it has determined that the installation of the new 230kv transmission lines is substantially complete; and authorized the Director of the Department, in his discretion, to substitute the Department's preferred language to implement this provision either in addition to or in lieu of comparable EPA language.

The motion passed 3 to 2 (Mr. Moore, Ms. Thomson and Mr. Buckheit voted yes. Mr. Langford and Mr. Hanson voted no.)

Minute No. 6 – Minutes from March 26, 2007: The Board approved, on a motion by Ms. Thomson, the minutes from the Board's meeting on March 26, 2007, with the following corrections: (1) middle initial for Mr. Hanson and (2) spelling of David Shear's name.

Minute No. 7 – Minutes from April 10, 2007: The Board approved, on a motion by Mr. Moore, the minutes from the Board's meeting on April 10, 2007, with the following corrections: (1) middle initial for Mr. Hanson and (2) add language to the minute on Mirant to reiterate that permit options 1, 2 and 3 were developed on the Board's own motion.

Minute No. 8 – Future meetings: The Board set November 28-30, 2007 as the date of the mercury conference and Board meeting. Mr. Buckheit informed the Board that he had a motion for the Board's consideration that was intended to tap the creativity of the Commonwealth to improve the air quality program. After discussion by the Board, motions were withdrawn. The Board, while not establishing

a permanent agenda item, asked that the public be informed that the Board is looking for good ideas to improve Virginia's air quality program and is looking for two presentations at their meeting in September (date to be established).

Cindy M. Berndt

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